

In the Matter of)
)
Reallocation of Television Channels) ET Docket 97-157
60-69, the 746-806 MHz Band)

To: The Commission

The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) hereby submits the following comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 97-245 (released July 10, 1997), 62 Fed. Reg. 41012 (July 31, 1997).

No. 410-360-01
1-14-53-12

I. INTRODUCTION

After the Commission adopted its Notice in this proceeding, Congress passed and the President signed legislation requiring that the Commission allocate 24 MHz for public safety services in the 746-806 MHz band no later than December 31, 1997.¹ Thus, the basic question asked by the Commission in the Notice, *i.e.*, whether it should allocate 24 MHz for public safety in this band, has already been answered by Congress. The only remaining issues to be decided in this proceeding are the specific frequencies within the 746-806 MHz band that are to be reallocated, the allocation of the remaining 36 MHz, and the treatment of broadcast applicants, permittees, and licensees in the band. A separate proceeding, in which APCO will also participate, will address questions related to rules governing the actual assignment and public safety use of the 24 MHz.²

As recognized by Congress, the Administration, the Public Safety Wireless Advisory Committee ("PSWAC"), and the Commission itself, there is a substantial need to reallocate additional spectrum for public safety as soon as possible. The reallocation of 24 MHz in the 746-806 MHz band will eventually address a significant portion of those public safety spectrum needs. Portions of the band can be used very quickly for land mobile operations in many parts of the country and the frequencies are adjacent to many current public safety operations in the 800 MHz bands, enhancing interoperability and

¹ Section 3004 of the Balanced Budget Act of 1997, amending the Communications Act of 1934 by adding a new Section 337(a)(1). The statute also requires that the remaining 36 MHz in 746-806 MHz be allocated for commercial services and assigned through competitive bidding.

² Also to be decided in a future proceeding are the guidelines for interference protection between broadcasters and public safety agencies in the 746-806 MHz band. Those issues must be decided in a

equipment availability. Thus, APCO applauds the Commission's leadership in making this spectrum available for public safety.

APCO's enthusiasm for this allocation is tempered, however, by the fact that the spectrum will be encumbered by over 90 analog and digital TV allotments until at least 2006, especially in some of the nation's most populous and spectrum congested areas. In those areas in particular, additional spectrum is needed now. Thus, APCO urges the Commission in this and other appropriate proceedings to take all necessary steps to maximize the extent to which the 24 MHz allocated for public safety and adjacent channels are cleared of broadcast users as soon as possible. In that regard, APCO has filed a petition in MM Docket No. 87-268 seeking reconsideration of the allotment of digital TV allotments in the 746-806 MHz band, and has joined with others in the public safety community in urging a rapid departure of incumbent analog stations in the band.

Especially until the 746-806 MHz band is cleared of broadcast stations, the Commission must also take other steps to address the immediate spectrum requirements of public safety agencies. This includes granting waivers to public safety agencies to use unassigned frequencies in other services, as required by a provision in the Balanced Budget Act (see new Section 337(c) of the Communications Act). While such waivers are unlikely to yield substantial amounts of spectrum, some minimal relief may be possible in critical areas where the 24 MHz allocated in this proceeding is not yet available.

APCO also emphasizes that the Commission's job is not yet done. The Commission must still find and allocate at least 2.5 MHz of spectrum for interoperability

fashion that maximizes the extent to which public safety agencies will be able to utilize the spectrum until the end of the DTV transition.

with the current 150-170 and 450-512 MHz public safety bands, a critical requirement identified by PSWAC. There are interoperability benefits to the 746-806 MHz band as it will be interoperable with many of the current 800 MHz public safety systems and will facilitate the development of new shared systems, which have inherent interoperability benefits. However, the 746-806 MHz allocation will not provide interoperability with the thousands of public safety users that will continue to operate in the 150-170 MHz and 450-512 MHz bands. Those are, and are likely to remain, the “workhorse” bands for many public safety agencies. Finally, aside from the 2.5 MHz for interoperability, and the 24 MHz in 746-806 MHz, the Commission must also continue to seek sources for the 70 MHz of additional spectrum that PSWAC estimated would be needed for public safety by the year 2010.

II. THE COMMISSION SHOULD ALLOCATE 764-776 MHz AND 794-806 MHz FOR PUBLIC SAFETY.

The Commission proposes an allocation of 764-776 MHz (channels 63 and 64) and 794-806 MHz (channels 68 and 69) for public safety. APCO supports this specific allocation for the reasons discussed in the Notice and in the separate comments of NPSTC. As noted therein, these specific frequencies will provide efficient channel separations for land mobile operations in the band. Furthermore, these specific channels are the least encumbered of the ten channels available for reallocation in the 746-806 MHz band, and will maximize early public safety operations. In particular, 800-806 MHz (channel 69) has only a handful of incumbent operations as few broadcasters were willing or able to operate under the constraint of protecting adjacent channel land mobile facilities

at 806 MHz. That proximity to the 800 MHz land mobile bands is another important reason why 800-806 MHz should be included in the 24 MHz reallocated for public safety, as it will maximize the potential for interoperability between new and old systems.³

III. NEW BROADCAST OPERATIONS SHOULD NOT BE PERMITTED ON CHANNELS ADJACENT TO PUBLIC SAFETY ALLOCATIONS.

The Commission proposes that the remaining 36 MHz in the 746-806 MHz band be made available for commercial mobile, fixed, and broadcast services through competitive bidding. APCO shares the concerns of NPSTC regarding the potential for new permanent high power broadcast operations in the 746-806 MHz band. Such operations could impose severe long-term constraints on the ability of public safety to operate interference free operations on adjacent channels. For example, a full power, wide area broadcast station operating on channel 67 would likely interfere with public safety operations on channel 68. As it is, public safety use of the 24 MHz will be constrained for the next ten years by incumbent analog (and DTV) stations. No new impediments should now be imposed. At most, permanent broadcasting operations in 746-806 MHz should be limited to channels that are not adjacent to public safety allocations (i.e., channels 60, 61, and 66).

³ As noted, in many areas some or all of the 764-776/794-806 MHz spectrum is encumbered by broadcasters. In some of those areas, however, other 746-806 MHz channels may be vacant. Therefore, consistent with new Section 337(c) of the Communications Act, the Commission should grant waivers from agencies in those areas that may want to use other vacant 746-806 MHz channels on an interim basis pending the end of the DTV transition.

IV. MAXIMIZING PUBLIC SAFETY USE OF THE 746-806 MHz BAND MUST BE THE PRIORITY IN ADDRESSING EXISTING AND PROPOSED BROADCAST OPERATIONS.

Several issues are raised in the Notice regarding existing low power broadcast licensees, full power construction permit holders, license applicants, and those with pending requests for broadcast allotments in channels 60-69. Each of these issues must be resolved with the principal goal being to maximize the extent to which 24 MHz of spectrum can be assigned and utilized for public safety as soon as possible.

There are currently a large number of low power stations licensed to operate on channels 60-69. APCO does not object to efforts to accommodate those low power stations to the extent possible. However, we also strongly support the Commission's statement, in paragraph 19 of the Notice, that "any accommodation of low power operations should not impede public safety use of the spectrum...." For example, public safety users are unlikely to require immediate displacement of all rural low power TV translators. However, all such low power TV operations must remain secondary to public safety and be must be prepared to relocate or cease operations when public safety systems initiate operation in areas where interference could occur.

Among the full power television allotments in channels 60-69 are 22 construction permits. In MM Docket 87-268, the Commission determined that those permittees are entitled to DTV allotments below channel 60. However, as the Commission notes, there has been little or no effort to construct some of those channel 60-69 stations. Thus, the Commission offers a creative solution of allowing those permittees to construct a DTV channel on their allotment below channel 60, without any obligation to construct an analog

station above channel 60. APCO supports that plan, as it may add a few more “open channels” for immediate public safety operations.

The Commission also asks whether public safety and other new service providers in the 746-806 MHz band should be allowed to make monetary payments to broadcast licensees or construction permit holders to encourage their accelerated relinquishment of channel 60-69 authorizations. APCO does not oppose allowing such arrangements, though it is deeply troubled by the concept that the only way a public safety agency may be able to obtain spectrum for the protection of life and property is to pay a commercial broadcaster to relinquish radio spectrum that is a public resource. Paying for spectrum access is not the answer. Additional steps must be taken by the Commission and, if necessary by Congress, to provide other incentives for broadcast licensees and permittees to move quickly and make room for critical public safety operations. One such incentive may be to discount substantially the Commission’s regulatory fees for broadcasters who vacate channel 60-69 authorizations prior to the end of the DTV transition period.

APCO strongly supports the Commission’s proposal to dismiss all pending applications and petitions for allotments for new broadcast stations that would operate on channels 60-69. Granting such applications and petitions is unnecessary as a matter of law, and, as a matter of public policy, would significantly reduce the availability of spectrum for public safety in the 746-806 MHz band.

The Commission must not adopt the alternative of dismissing only those applications and petitions for stations in major metropolitan areas. While those are the areas with the greatest public safety spectrum shortages, allowing new stations in less populated areas will also impact more populated communities in distant areas due to the

need for co-channel and adjacent channel separations. In addition, some of the new 746-806 MHz public safety systems are likely to be state-wide systems, covering both urban and rural areas. Working around broadcast stations will make those systems difficult, if not impossible, to plan, construct and operate. Finally, the 746-806 MHz band also offers the opportunity to implement new public safety communications technologies, the demand for which is not limited to major metropolitan areas

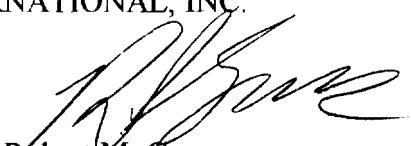
CONCLUSION

This proceeding is yet another important step in the Commission's efforts to allocate additional radio spectrum for public safety agencies across the nation. APCO urges the Commission to move forward to complete this proceeding as mandated by Congress, and to take additional steps as discussed above in this and related proceedings to maximize the early availability of spectrum in the 746-806 MHz band for public safety use.

Respectfully submitted,

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